

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Herb Hyman-(954) 797-1016

SUBJECT: Resolution

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE COCA-COLA COMPANY FOR AN EXCLUSIVE BEVERAGE AGREEMENT.

REPORT IN BRIEF:

The Town is in need of scoreboards for the newly developed sports fields at Pine Island Park. Staff pursued proposals from both Coca-Cola and Pepsi-Cola in accordance with the Town Council's direction. It was determined that Coca-Cola provided the more favorable proposal. The Town would receive ten (10) scoreboards, a double faced message board, \$6,000/yr. to E.A.S.E. Foundation which represents proceeds from the vending machines, and \$1,000/yr. to the Town. In exchange, the Town will agree to sell only Coca-Cola products at all concession stands and all vending machines. The concessionaires currently under contract to the Town have been involved in all negotiation meetings and are in agreement to abide by the provisions of this agreement.

PREVIOUS ACTIONS:

Not applicable.

CONCURRENCES:

A negotiation team of staff members negotiate with Coca-Cola Company.

FISCAL IMPACT:

Has request been budgeted? n/a

If yes, expected cost-

Account Name:

Additional Comments: This agreement provides revenue to the Town

RECOMMENDATION(S):

Motion to approve the resolution.

Attachment(s):

Resolution

Two (2) copies of the agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE COCA-COLA COMPANY FOR AN EXCLUSIVE BEVERAGE AGREEMENT.

WHEREAS, the Town is in need of scoreboards for the newly developed fields at Pine Island Park; and

WHEREAS, the Coca-Cola Company has proposed to supply all scoreboards in exchange for exclusive pour rights at all Town of Davie concession stands and vending machines; and

WHEREAS, the concessionaires that the Town is currently under contract with have all agreed to this arrangement; and

WHEREAS, after review, the Town Council authorizes the Mayor to execute an agreement with The Coca-Cola Company.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council authorizes the Mayor to execute an agreement with The Coca-Cola Company for exclusive pour rights at all Town of Davie concession stands and vending machines.

SECTION 2. The initial contract term is eight (8) years with options to extend the contract for two (2) additional three (3) year term by mutual agreement of the parties. Contract extensions, if appropriate, will be handled administratively by staff.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2001

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2001

BEVERAGE AGREEMENT

This Agreement is made as of the ____ day of June, 2001 by and between The Town of Davie, a Florida municipal corporation with its principle offices located at 6591 Orange Dr. Davie, FL 33414 (the "Account") and The Coca-Cola Company, a Delaware corporation ("Company") and Coca-Cola Enterprises, a Florida corporation, with a principle office located at 3350 Pembroke Rd. Hollywood, FL 33021 (the "Bottler") (Company and Bottler are jointly referred to herein as "Sponsor").

WITNESSETH:

WHEREAS, Account desires to grant to the Bottler the right to sponsor the Town of Davie and to advertise and sell their beverage products in all Town owned and operated properties ("Facilities"); and

WHEREAS, Bottler desires to exclusively advertise and sell certain of its beverage products at and in connection with the Town of Davie and in such Facilities;

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained the parties do hereby agree as follows:

1. Definitions

(a) "Beverages" shall mean all carbonated and noncarbonated nonalcoholic beverages, including but not limited to soft drinks; mixers; flavored and unflavored packaged waters; fruit juices; fruit juice-containing or flavored drinks; fruit punches and ades; isotonic energy and fluid replacement drinks (sometimes referred to as "sports drinks"); coffee and tea drinks; and all drink or beverage bases, whether in the form of syrups, powders, crystals, concentrates or otherwise, from which such drinks and beverages are made.

(b) "Products" shall mean all the Beverages sold or marketed by the [Bottler and the Company].

(c) "Competitive Products" shall mean all Beverages which are not Products of Coca-Cola.

(d) "Facility" shall include all Town owned properties, all vending and concession areas.

2. Term

(a) This Agreement shall be in effect for a period of eight (8) years, beginning June __, 2001.

(b) The agreement may be extended for two (2) additional three (3) year terms by the mutual agreement of the parties.

(c) Account shall grant Bottler first right of refusal of any similar agreement regarding advertising and Beverage availability rights.

3. Advertising Rights

(a) Account hereby grants to Bottler the exclusive right to advertise and sell Beverages at the Facilities and at all Town sponsored events in connection with the Facilities as well as all current

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concession stands and all future concession stands located in the various parks throughout the Town. If the food and beverage business is contracted out by the Town to a Concessionaire, they must sell exclusive Coca-Cola products and they must purchase said products directly from the Florida Coca-Cola bottling Company.

(b) Account hereby grants Bottler the specific advertising rights and benefits as indicated on Exhibit B hereto.

(c) Account agrees that its advertising shall be positioned at all times in such a manner that the advertising message is in no way obscured (electronically or otherwise) and is clearly visible to spectators and the media. The Products shall be prominently listed on any menu boards located at, or in the Facilities and all equipment dispensing Products shall be prominently identified with the appropriate trademarks/logos.

(d) Account further agrees that all Beverages will be dispensed in Approved Cups and that no other trademarked cups, coolers or containers will be permitted.

4. Sponsorship Rights

(a) Bottler will have the exclusive right to advertise the Products as the "Official" or "Exclusive" soft drinks, sports drinks, water, tea and/or juice or juice drink, etc. of the Facilities or local events.

(b) Account hereby grants to Bottler a royalty-free license, exclusive for Beverages, to use the trademarks, logos and other intellectual property of the Account, Facilities, and/or any events in connection with the promotion of Products. Such promotion may occur in advertising (TV, radio, print), packaging, vessels, promotional materials, and point of sale materials for Products and may be in connection with the marks and logos of Bottler's customers.

5. Product Rights

(a) Account hereby grants to Bottler the exclusive right to sell or distribute Beverages (i) at the Facilities, (ii) at the Events, and (iii) at Event related events. Account and its concessionaire shall purchase all Products, Approved Cups, lids and carbon dioxide from Bottler.

(b) Account hereby grants to Bottler the exclusive Beverage vending rights at the Facility. The Town shall have the right to approve the cost at which all vending products are sold for.

6. Sponsorship Fees

(a) In consideration of the rights and benefits granted to Bottler and Coca-Cola hereunder, Bottler agrees to pay account the sum of \$7,000 per year in years 1-5 (\$6,000 to E.A.S.E.; \$1,000 to the Town), \$8,000 per year in years 6-8 (\$6,500 to E.A.S.E.; \$1,500 to the Town). If this agreement is renewed, a mutually accepted amount will be agreed upon by both parties for the Term year(s). Payments will be made bi-annually – 50% in June and 50% in December.

(b) Purchase five (5) baseball/softball scoreboards, four (4) hockey scoreboards, one (1) basketball scoreboard and one (1) double faced message display sign within the first year of this agreement. Installation of all scoreboards and the double-faced message display sign are the sole responsibility of the Town of Davie.

7. Competitive Products

- (a) No Competitive Products may be sold, dispensed, sampled or served anywhere at the Facility.
- (b) No permanent or temporary advertising, signage or trademark visibility for Competitive Products will be displayed or permitted anywhere (i) at the Facility, (ii) during any Event, (iii) in advertising for the Event(s).
- (c) Account will not enter into any agreement or relationship whereby any Competitive Products are associated in any manner with Account, the Facility, any of the Account Marks, or the Event in any advertising or promotional activity of any kind.
- (c) Should Account learn of any Competitive Products advertising or promoting any association with the Account, Facility or the Event, Account shall use its best efforts to stop such advertising or promotion to protect the exclusive associational rights granted to Bottler in this Agreement.

8. Service

Should mechanical service be required to repair a vending machine, cooler or contain unit, the call will be given priority once a repair call has been originated, and service will be provided within 24 hours. If the equipment is deemed non-field repairable by a Service Supervisor, the Bottler will replace the equipment within seven (7) days pending availability. If the exact model of equipment is not available a similar model will be used until the replacement model becomes available.

9. Termination

- (a) If Account breaches any of its obligations set forth in this Agreement, then at its option and not as its sole remedy, Bottler may terminate this Agreement, and Account shall return any equipment and pay to Bottler a pro rata portion of the Sponsorship Fees.
- (b) Notwithstanding the other provisions of this Agreement, if any federal, state or local law, rule, regulation or order prohibits, restricts or in any manner interferes with the sale or advertising of Beverages at any time during the Term of this Agreement or if for any reason the use of the Facility declines or the Event is not held, then at its option and not as its sole remedy, Bottler may terminate this Agreement and Account shall return any equipment and pay to Bottler a pro rata portion of the Sponsorship Fees.
- (c) Account represents and warrants that it has full right and authority to enter into this Agreement and to grant and convey to Bottler the rights set forth herein. Upon expiration or revocation of such authority, then at its option and not as its sole remedy, Bottler may terminate this Agreement, and Account shall return any equipment and pay to Bottler a pro rata portion of the Sponsorship Fees.

10. Insurance

Account agrees to maintain insurance with a company or companies acceptable to Bottler, which company or companies shall have at least a B+ Best rating. Account agrees to carry a minimum of One Million Dollars (\$1,000,000) of public liability and property damage insurance to adequately protect the respective interests of the parties hereto, said insurance to include a contractual liability endorsement to cover Account's obligations under this Agreement. Both Bottler shall be shown as additional insureds and shall be furnished with a certificate evidencing such coverage. Such certificate shall further contain a

provision that said policy or policies shall not be canceled or modified without thirty (30) days' notice by Account to Bottler in writing.

11. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event either party brings suit for enforcement of disagreement, the prevailing party shall be entitled to all reasonable attorney's fees and court costs in addition to any other remedy afforded by law. The venue shall only be Broward County

12. Retention of Rights

Account shall not obtain, by this Agreement, any right, title or interest in the trademark(s) of The Coca-Cola Company or Bottler, nor shall this Agreement give Account the right to use, refer to or incorporate in marketing or other materials the name, logos, trademarks or copyrights of Bottler or The Coca-Cola Company.

13. Most Favored Sponsor

Account shall not enter into any other sponsorship arrangement with terms which are more favorable in the aggregate than those provided to Bottler

14. Entire Agreement

This Agreement and its exhibits contain the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be assigned without the prior written consent of all parties. All amendments to or waivers of this Agreement must be in writing signed by all the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Bottler

Account

By: 

By: _____

Printed Name: Rux Baney

Printed Name: _____

Title: Area Cold Drink Manager

Title: _____